



February 14, 2002

Mr. James L. Hall  
Assistant General Counsel  
Office of the General Counsel  
P.O. Box 13084, Capitol Station  
Austin, Texas 78711

OR2002-0711

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#159820.

The Texas Department of Criminal Justice (the "department") received a request for copies of information pertaining to sixteen specified inmates and former inmates. You state that the department only maintains information with respect to seven of the sixteen specified inmates and former inmates.<sup>1</sup> You claim that the submitted information is excepted from disclosure pursuant to section 552.134 of the Government Code. We have considered the exception you claim and have reviewed the submitted exemplar documents.<sup>2</sup> We have also considered

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<sup>1</sup> We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. See Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. See Attorney General Opinion H-90 (1973); see also Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1 (1990). A governmental body must only make a good faith effort to relate a request to information which it holds. See Open Records Decision No. 561 at 8 (1990).

<sup>2</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that several of the documents are accident report forms that appear to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064. We note that section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information protected from disclosure by other statutes. Section 550.065(b) of the Transportation Code provides that, except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *See id.* In this case, the requestor has not provided the department with two or more of the pieces of information required under section 550.065(c)(4). Accordingly, we conclude that the accident report forms that we have marked are confidential under section 550.065(b) of the Transportation Code and, thus, are excepted from disclosure pursuant to section 552.101 of the Government Code.

We also note that several of the documents are medical records, access to which is governed by the Medical Practice Act (the "MPA"), subtitle B of Title 3 of the Occupations Code. The MPA provides that "a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter." Occupations Code § 159.002(b). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. *See* Open Records Decision No. 565 at 7 (1990). We have marked the medical records that may only be disclosed in accordance with the access provisions of the MPA. *See* Occ. Code § 159.005(a)(5), (b); *see also* Open Records Decision Nos. 598 (1991), 546 (1990) (finding that because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records). Absent the applicability of an MPA access provision, the department must withhold these medical records from disclosure pursuant to section 552.101 of the Government Code in conjunction with the MPA.

We also note that one of the documents contains information that relates to a sex offender who was subject to registration under Chapter 62 of the Code of Criminal Procedure.

Article 62.02(b) of the Code of Criminal Procedure requires a sex offender registrant to provide the Texas Department of Public Safety ("DPS") with the person's full name; each alias; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver's license number; shoe size; home address; a photograph of the person; a complete set of the person's fingerprints; the type of offense the person was convicted of; the age of the victim; the date of the conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; and any other information required by DPS. *See* Crim. Proc. Code art. 62.02(b). This information is generally public information with the exception of the person's social security number, driver's license number, telephone number; all information required by DPS outside of the enumerated categories of information; and any information that would identify the victim of the offense for which the person is subject to registration. *See* Crim. Proc. Code art. 62.08(b). Accordingly, with the exception of the information governed by article 62.08(b), the department must release to the requestor the information required to be provided under article 62.02(b) of the Code of Criminal Procedure.

We now address your arguments under section 552.134 for the remaining information. Section 552.134 provides in pertinent part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). The remaining information concerns inmates and former inmates who are or were confined in a facility operated by the department. However, we note that section 552.134(a) is explicitly made subject to all eight subsections of section 552.029 of the Government Code. *See* Gov't Code § 552.029(1)-(8). Therefore, except for information that must be released to the requestor under section 552.029(1) through (8), the department must withhold the remaining information from disclosure pursuant to section 552.134 of the Government Code.

In summary, the department must withhold from disclosure the accident report forms that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. Absent the applicability of an MPA access provision, the department must withhold the marked medical records from disclosure pursuant to section 552.101 in conjunction with the MPA. With the exception of the information governed by article 62.08(b), the department must release to the requestor the information required to be provided under article 62.02(b) of the Code of Criminal Procedure. Except for information that must be released to the requestor under section 552.029(1) through (8), the department must withhold the remaining information from disclosure pursuant to section 552.134 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

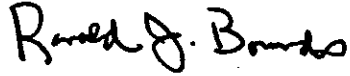
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Ronald J. Bounds". The signature is written in a cursive, slightly slanted style.

Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID#159820

Enc. Marked documents

cc: Ms. Sarah R. Teachout  
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(w/o enclosures)